



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## RAILWAY REGULATION IN TEXAS

---

BY HON. JAMES L. SLAYDEN,  
Member of Congress from Texas.

---

The adjustment of the relative rights of the individual citizen and of his own powerful creature, the corporation, is the latest and one of the most perplexing problems with which we have to deal. The treatment of the question is complicated by the necessity of keeping in mind the constitutional limitations of the federal government and the jealously guarded reserved powers of the states. Furthermore, there is no denying the fact that we approach the consideration of this latter phase of the question more or less influenced by the political school in which we have been trained, and for this reason there is much fog.

I believe, I cannot help believing, that in the governmental supervision of industry and corporations it is better to leave all the control possible with the states. The states are nearer the problem and the people. The scope of that power and the limits of its exercise are gradually being defined by the courts, both state and federal, and it gratifies me as an American citizen to be able to say that when the boundaries are once clearly defined by the higher courts there is prompt, cheerful and general acceptance of the decision.

But, Mr. Chairman, it does not become me, a layman, to hazard my small reputation in the discussion of such purely legal questions, and, acting on a hint given by one of your distinguished members, I shall confine myself to a brief review of the more important corporation legislation of my own state and some of the consequences that have come from it.

### *Texas Not Opposed to Corporations*

The very name of Texas is an anathema in corporation circles, and most unjustly so. Few of the harsh critics of the mighty commonwealth that contributes not less than 175 million a year to the vast total of our exports have thought to inquire what Texas has done for the corporations. I now refer particularly to

the transportation lines that are at the same time the most useful, the most powerful and the most abused of all corporations. These critics invariably say that the corporations have made Texas and that Texans are not grateful. I do not think they are accurate in that statement. The corporations have certainly accommodated the state and have expedited its development, and we duly appreciate the service.

But, it is pertinent to inquire, what has Texas done for the railways, and on which side is the debt of gratitude? States now and then do great and generous things. It is possible to them because they are not organized for profit. But, except a few uncaptialized associations for charity, who knows of a corporation that exists or operates for any other purpose than gain?

The government of the State of Texas appreciated the importance of lines of communication, and in order to induce the construction of railways the legislature, in 1854, nine years after we came into the Union, passed an act giving to each corporation sixteen sections, or 10,240 acres of land for each mile of road constructed. In addition the state gave the right of way over the public domain to such roads as crossed it. Under this act there was surveyed out of the public domain and transferred in fee to the railways the stupendous amount of 34,179,055 acres, nearly equal in area to the great State of Kentucky, and more than three-fourths of the area of Pennsylvania. Please remember that these donations were not made at the time that William Penn became proprietary of the colony of Pennsylvania, when North America was a wilderness, lands worthless and continents were disposed of at the whim of a sovereign, but in the last fifty years, after Europe had already become so suffocated with people that thoughtful statesmen were seeking new lands to relieve the congestion. That great body of land had a distinct and an immediate value. It took no unusual business sagacity to see that it represented enormous wealth.

Texas had an area of 265,000 square miles, and a comparatively small population so scattered that the people were beyond many of the comforts of civilization. The statesmen of that day were controlled by a perfectly fair spirit. They knew that no railways could earn dividends at once in the ordinary operation of the lines, and these excessive subsidies were given with the perfectly clear

understanding on both sides that they were intended to cover the business risk of constructing in advance of actual necessity. They were meant to cover, and I do not doubt that they did fully cover, the period of waiting until the state had been settled and traffic developed.

That by some sort of juggling only comprehended in the higher financial circles this valuable asset was taken away from the share purchasers and transferred to the private accounts of a few people of an inner circle is, I suppose, also true. But Texas was not responsible for that, and so long as the forms of law were observed could not interfere nor, so far as I am advised, was interference ever invited. Great fortunes were made by the few who got the land and other valuable assets, and the buyers of the shares in the railways that were speculatively built ahead of the service demands, or the possibility of immediate profitable earnings, were left with certificates of ownership in property that was tremendously over-capitalized. When these innocent purchasers complained that they could get no return on their investment they were invited to turn their wrath loose on the state that had given so prodigally. Since then we have been the target for every ill-advised and unfortunate speculator in these shares.

I feel that in this connection I may ask you to consider the fact that the lands given by Texas to induce railway construction are, at their present assessed value, worth more than is every mile of road, including equipment, in the state at the present assessed value of the physical property of such corporations. This estimate of comparative values takes into consideration the thousands of miles of road that have been built since the state discontinued land donations.

#### *Resources Available for Traffic*

By the aid of railways and because a fertile soil and agreeable climate made it inevitable, the State of Texas has grown rapidly in population and marvelously in production. When it was joined to the Union by joint resolution in 1845, Texas had a population of about 150,000; to-day, speaking conservatively, it has about four and a quarter millions.

Out of each five bales of cotton produced in the whole world Texas supplies one. We market more cattle each year than any

state in the American Union. We have wheat and maize for export. We have a pine forest in East Texas—at least the lumber trusts have—about eighty miles wide and nearly three hundred miles long. Our granite quarries were lately described by Dr. Willard Hays, of the United States Geological Survey, as being “really inexhaustible.” The railways each year send out train loads of vegetables, melons, berries and fruits. To the production of rice we devote a larger area than that of some states. Our sugar and tobacco plantations have great and increasing importance. All these and more traffic-making industries are reached by the railways that were built by Texas and are now owned in New York.

### *Constitutional and Statutory Control*

From time to time in the past we have enacted laws to regulate the operation of these lines of transportation and to fairly adjust charges for service, and it is absolutely certain that we will do so in the future. Every act may not have been wise, but certainly none were intended to be confiscatory. No citizen has wanted to cripple the railways, or to prevent a reasonable earning on the actual investment. The purpose of the laws is to insure justice and fair treatment.

Section 26 of Article 1 of the State Constitution declares that “perpetuities and monopolies shall never be allowed.”

Section 5 of Article 10 says that, “No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.”

Section 6 of Article 10 says: “No railroad company organized under the laws of this state shall consolidate by private or judicial sale or otherwise with any railroad company organization under the laws of any other state or of the United States.”

Several acts of our legislature have sought to make these constitutional limitations operative. Gentlemen whose services are con-

trolled by a large fee and whose consciences appear sometimes to be able to hide behind a small technicality will tell you that the corporations they represent have obeyed the spirit and the letter of these laws. But, Mr. Chairman, it is known of all men who have tried to keep themselves informed that the constitution, so far as it could be done, and the statutes thereunder made, have both been defied. It might reasonably be expected that this defiance of the solemn enactments of the people themselves would awaken a spirit of anger and reprisal. Yet I do not think it has done so to any appreciable degree.

A recent incident in the transportation history of the state will prove, I think, that it has not done so. The railway commission of Texas ordered that the passenger fare on the Houston and Texas Central Railway be reduced to two and one-half cents a mile. The enforcement of the order was enjoined in the federal court, and, while the case was pending, the people of the state, the people whom the order was intended to benefit, acting through organized bodies, and individually, declared that the time had not yet come in Texas when the railways could afford to carry passengers for two and one-half cents a mile, and the order was abandoned. These same people in large numbers petitioned the legislature, when that body thought to take the matter out of the hands of the railway commission, not to reduce the rate charged for the carriage of passengers.

### *The Railway Commission*

In 1890, by vote of the people, the constitution of the state was amended and the legislature empowered to create the state railway commission. It has sometimes been described by its enemies as "a commission with teeth." It has the power to fix the rates for the carriage of goods and passengers. It has exercised that power in the main with justice and fairness. From time to time, as business developed and earnings seemed to justify it, railway rates have been reduced. Of course that reduced the earnings, but, on the other hand, it broke up the habit of giving rebates and that, in turn, increased earnings.

It has done another thing that entirely justifies its existence. It completely abolished the pernicious practice of discriminating between sections and therein has promoted a symmetrical develop-

ment of the state. Before the commission undertook the regulation of rates a few cities controlled the wholesale trade of the state. Now there are many small centers of trade from whence a profitable wholesale business is done. It has materially helped to a distribution of population a thing that is very desirable in itself.

Under the terms of law the commission also has a sort of supervision of the physical property of these corporations, that is, it has the power and it is made the duty of the commissioners to see that traffic is not impeded nor the lives of passengers put in jeopardy by a failure to keep track and rolling stock up to a reasonable standard of efficiency. One would naturally think that this duty was of the highest privilege and that the roads themselves would hurry to execute an order, if reasonable, intended to protect the lives of their patrons. Strange to say such orders seem to be resisted with more vigor even than one to reduce the freight charges.

In a sensational manner one of the great roads has lately been put into the hands of a receiver, appointed by a federal court, and avowedly for the purpose of avoiding an order of the Texas railway commission. At the risk of exceeding the time allowed me for this speech I shall give you a brief history of this case.

Mr. O. B. Colquitt, of the Texas railroad commission, under date of April 4th, has furnished me with the following account of the circumstances that lead up to the placing of the International and Great Northern Railway in the hands of a receiver. For the sake of brevity I will merely use extracts from Mr. Colquitt's letter, hoping at some other time to publish it in full:

A few months ago the commission determined to make an inspection of the physical condition of the properties of several of the railways in the state. We had been receiving such numerous and general complaints in the danger to life and property transported over these lines that this induced us to take up this matter. Frequent and numerous wrecks of passenger and freight trains were reported to us, which resulted in the destruction of property to a greater or less extent, which had to be paid for by, and was a clear loss to, the railroad company. Perhaps the injuries, loss and damages resulting from wrecks in the last six months on the I. & G. N. R. R. have amounted to a very large sum of money.

The commission, after an inspection of the physical property, issued its order direct to the I. & G. N. R. R. Co., calling upon that corporation to improve its roadbed and put it in a more safe condition, and requiring of it

a reduction of their time card equal to the average loss of time shown by their train sheets for thirty days prior to the issuance of said order. The schedule of the trains was accordingly reduced in compliance with said order, and the railroad company, through its officers, notified us that they would comply with the terms of the commission's order as far as they were able to do so, the attorney for the road stating to the commission in person that it was believed that the commission's order in that respect requiring improvements was reasonable and just, and ought to be complied with. We had the assurances of the managing officers of the road that they would attempt to make a compliance with said order, and had begun to report to us that, in pursuance of same, improvements were being made.

The commission is not able to say why the proceedings in the federal court were taken, unless it was for the purpose of avoiding a compliance with its order requiring an improvement of its property, which the officers of the road admitted to be just and reasonable, in the interest of the property and to secure the safety of the traveling public.

The total average amount of bonds outstanding on the I. & G. N. R. R. Company's mileage at this time is \$22,465, and the stock is \$8,820, making a total of \$31,809 of stocks and bonds per mile.

The physical condition of the road certainly justified the railroad commission in issuing the order it did requiring its improvements.

The following statement, showing the number of wrecks that occurred on the International and Great Northern Railway for the period of time shown in the statement, appeared in the *Houston Post*, of February 29th:

Ninety-nine wrecks since June 30 is the record of the I. & G. N. R. R., which because the railroad commission of Texas ordered it to improve its trackage and lessen the danger to the lives of its patrons, was placed in the hands of a friendly receiver. There is not another railroad in all Texas which in eight months will average a fraction over twelve wrecks per month on a mileage of 1,163 miles. Mr. Gould, who holds the controlling interest in this railroad, charged that the Texas commission was responsible for placing the road in the hands of an attorney of another of his lines.

Upon request, Secretary McLean, of the railroad commission, to-day addressed the following communication to Commissioner O. B. Colquitt:

"In pursuance of your instructions, I enclose herewith copy of an order issued by the railroad commission of date September 17, 1907, and amended October 14, 1907, requiring railroad companies to report to the railroad commission of Texas all wrecks and causes thereof on the railroads in the state.

"Engineer Thompson, of the commission, reported on December 17, 1907, on the main line of the I. & G. N. R. R., between Longview and Laredo,

from June 30, 1907, to November 25, 1907, 27 wrecks. The commission has received reports since that date of 9 wrecks up to and including February 27, 1908, or a total of 36 wrecks since June 30, 1907.

"Engineer Thompson, in his report of February 1, 1908, on the Gulf Division of the I. & G. N. R. R., between Palestine and Houston, from June 30, 1907, to January 18, 1908, shows 15 wrecks, since which date 5 wrecks have occurred on this division and two between Houston and Galveston, making a total of 22 since June 30, 1907, between Palestine and Galveston.

"Engineer Thompson also lists in his report of February 4, 1908, 33 wrecks on the Fort Worth Division of the I. & G. N. R. R., Spring to Fort Worth, from June 30, 1907, to January 12, 1908, since this period 8 wrecks have been reported to the commission on this division, making a total of 41 accidents since June 30, 1907, or a grand total on the whole road of 99 wrecks from June 30, 1907, to date.

"The above information is from records filed in this office by the officers of the railroad company."

I regret to say that the story of the bad condition of the track, the rails, ties and ballast has not been exaggerated. It has been seen and admitted by officials of the road as well as by other citizens of the state. Travelers from the North and East who are accustomed to greater comfort and security than we enjoy have fairly shouted their condemnation of the policy of a great corporation that has shown so little regard for the safety of its patrons. Commissioner Colquitt tells me in his letter that high officials of the road have admitted to him that the order of the commission was proper in every way, that the improvements were urgently needed and the demands moderate.

I quote here another paragraph from the letter of Commissioner Colquitt:

As you perhaps already know, the I. & G. N. R. R. Company, under charters granted by the Texas Legislature in the early '70's, was authorized to construct a line from Longview to Laredo, and to consolidate with the Great Northern Railroad, which had a line from Houston to Palestine. By the terms of the legislative act permitting said consolidation and chartering said road, the State of Texas agreed to give to said railway company as bonuses state bonds to encourage the building of said road, amounting to \$10,000 per mile. Subsequently, by compromise, the I. & G. N. R. R. Company accepted twenty sections, or 12,800 acres of land per mile of road in lieu of the \$10,000 per mile of state bonds which the legislature originally pledged to said company.

Mr. Colquitt might have added that this road not only had a land subsidy of 12,800 acres per mile, but in addition, as a part of the compromise he refers to, enjoyed exemption from tax-paying for twenty-five years. The history of that transaction makes one of the most interesting chapters in the account of the prodigality of Texas, and has embalmed the memory of carpetbag government without entirely removing the odor.

In connection with the receivership transaction, Mr. Chairman, I will merely add that I am informed that the operating officials of the road—the personnel of which has lately changed—have persistently asked authority to spend a part of the earnings of the corporation in the improvement of the property.

#### *State Direction of Corporations*

What is known in Texas as “the stock and bond law,” passed in 1893, is an enactment of the twenty-third legislature, of which body I had the honor to be a member. At the time it did not have my complete approval, because I lived in the western part of the state, where we did not have enough railways, and I thought that it would interfere with their speculative building. But I do now endorse the law, absolutely and unreservedly. Here is an extract from that celebrated act:

Hereafter no bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by lien or mortgage on any railroad or part of railroad, or the franchises or property appurtenant or belonging thereto, over or above the reasonable value of said railroad property, provided, that in case of emergency, on conclusive proof shown by the company to the railroad commission that public interests or the preservation of the property demand it, the said commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property.

Surely no investor can object to that law. It merely seeks to guarantee to the buyer of shares in Texas corporations that they are not giving up good money for water. Certificates of stock owned in Texas companies organized since 1893, stand for money or some other thing of value put into the corporation. For some years there was much friction between the railways and the commission, but now there is rarely any trouble between them. Each has come to realize the importance and the usefulness of the

other, and thanks to the great man who was the first chairman of the Texas railway commission, a satisfactory *modus vivendi* has been reached that I hope will long continue.

Mr. Chairman, it is impossible in the time allowed me to give a complete survey of the corporation laws of Texas, even if I were fitted for the task. I shall not undertake to do so. I will only add that we have statutes that forbid "pools, trusts, monopolies and conspiracies in restraint of trade." It gratifies me to be able to tell you that, armed with such laws, we have grappled with a powerful corporation that is reputed elsewhere to have bought courts and controlled legislatures, and that we have expelled it from the state. Vigorous, honest, resourceful Texas will not tolerate such corporations nor their methods.

We appreciate the difficulty of the work that we have undertaken, but will not let up until they have all been scourged from the state. Texas still belongs to the people, and we have dedicated ourselves to the task of keeping it as an unmatched inheritance for their children.

We are not hostile to corporations. We welcome them under the right circumstances, and when their energies are exercised according to law. We are not only willing to have them earn a reasonable profit on their capital and labor expended, but we rejoice at their success, for we know that they cannot prosper so unless the people share their good fortune. Beyond that they ought not to try to go. Beyond that we will not permit them to go.

Because it has no part in the discussion of the scope and limits of governmental control over industry and corporate management, I shall forbear to tell you of the glories of my state. Besides, you would call me a dreamer and a boaster if I told you the simplest facts about Texas.